

# **TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Monroe D. Kiar, Town Attorney (954) 584-9770

**SUBJECT:** Equestrian Park - Pasadena at Imagination Farms

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING ENTERING INTO AN AGREEMENT BETWEEN THE TOWN OF DAVIE AND PASADENA AT IMAGINATION FARMS, INC. FOR THE CONSTRUCTION OF AN EQUESTRIAN PARK.

**REPORT IN BRIEF:** This Resolution is necessary to approve a contract between the Town of Davie and Pasadena at Imagination Farms, Inc. whereby the owner has dedicated to the Town a parcel of land and will make certain improvements to said land to enable it to be used by the Town as a park.

**PREVIOUS ACTIONS:** Park amenities discussed and approved at previous open space meetings.

**CONCURRENCES:** N/A

**FISCAL IMPACT:** Owner shall receive a credit for said improvements to be applied to open space fees.

**RECOMMENDATIONS:** Motion to approve

**ATTACHMENTS:** Resolution and Agreement

Resolution No. \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING ENTERING INTO AN AGREEMENT BETWEEN THE TOWN OF DAVIE AND PASADENA AT IMAGINATION FARMS, INC. FOR THE CONSTRUCTION OF AN EQUESTRIAN PARK.

WHEREAS, Pasadena at Imagination Farms, Inc., a Florida corporation, owns a tract of land known as Imagination Farms West located with the boundaries of the Town of Davie; and

WHEREAS, the owner, Pasadena at Imagination Farms, Inc. has dedicated to the Town a parcel of land to be used as a park and is in the process of making certain improvements to said land; and

WHEREAS, the owner has been requested by the Town of Davie to provide additional physical improvements as set forth in the attached Agreement (attached hereto as Exhibit "A"), within said land; and

WHEREAS, the Town as agreed to compensate the owner for said improvements by giving owner a credit to be applied to open space fees as required by the Town of Davie Code, subject to the terms and conditions set forth in the Agreement; and

WHEREAS, it is in the best interest of the Town of Davie and its residents for the Town to enter into the attached Agreement with the owner, Pasadena at Imagination Farms, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

Section 1. That the Town of Davie does hereby approve the Agreement between the Town of Davie and Pasadena at Imagination Farms, Inc., a Florida corporation, attached hereto as Exhibit "A".

Section 2. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001.

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

ATTEST:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001.

## AGREEMENT

THIS IS AN AGREEMENT between the TOWN OF DAVIE, FLORIDA, a municipal corporation (hereinafter referred to as the "TOWN"), their successors and assigns and PASADENA AT IMAGINATION FARMS, Inc., a Florida Corporation, (hereinafter referred to as "OWNER").

### WITNESSTH:

WHEREAS, OWNER owns a tract of land, known as Imagination Farms West, located within the boundaries of the Town of Davie, said tract being described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Development Property"); and

WHEREAS, OWNER is in the process of developing the Development Property; and,

WHEREAS, OWNER has dedicated to the TOWN a parcel of land to be used as a park (more particularly described in Exhibit "B") and is in the process of making certain improvements to said land; and,

WHEREAS, the OWNER has been requested by the TOWN to provide additional physical improvements (as described in Exhibit "C") within said land; and,

WHEREAS, the TOWN has agreed to compensate the OWNER for said improvements by giving OWNER a credit to be applied to Open Space Fees as required by the Town of Davie code, subject to the terms and conditions set forth herein; and,

WHEREAS the Town and the Owner recognize that the improvements will serve to satisfy the intent of the Open Space Fees for the use and enjoyment of the public welfare; and

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter set forth, the TOWN and OWNER agree as follows:

1. The foregoing recitals are true and correct and are hereby incorporated herein by this reference.
2. OWNER hereby agrees to install the improvements as requested by the TOWN as described in Exhibit "C", attached hereto and by this reference made a part hereof (hereinafter referred to as the "IMPROVEMENTS").
3. Upon completion of the IMPROVEMENTS as contemplated in Paragraph 2 hereof and in exchange for the OWNER'S construction of the IMPROVEMENTS the TOWN agrees that it shall waive payment of the Open Space Fee, as that term is

defined in the Town of Davie Code and by this reference made a part hereof in the amount set forth in Exhibit "C". The Open Space Fee credits provided for herein shall be utilized by OWNER only on the property described in Exhibit "A" of this agreement. TOWN shall credit the Open Space Fee upon owner's completion of the IMPROVEMENTS, as contemplated herein below.

4. Owner agrees to complete all of the IMPROVEMENTS by no later than Ninety Days (90) following the approval and execution of this Agreement by the Town of Davie. No credits will be given to OWNER until the IMPROVEMENTS are completed. Upon completion, OWNER shall receive open space credits as set forth in paragraph 3 above, and OWNER will pay the difference between the amount of the open space credit and the Open Space payments then due for the Property. OWNER shall be excused for the period of any delay in the performance of any obligation hereunder when prevented from so doing by cause or causes beyond OWNER'S control which shall include without limitation, all labor disputes, civil commotion, civil disorder, riot, civil disturbance, war, war-like operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations, orders, moratoriums, or controls, fire or other casualty, or through Acts of God.
5. OWNER agrees to procure and maintain necessary professional liability insurance through out the installation and construction of the IMPROVEMENTS in the amount of One Million (\$1,000,000.00) Dollars, and to furnish the TOWN's Risk Manager with a copy of same.
6. OWNER shall indemnify and save harmless and defend the TOWN, its trustees, elected and appointed officials, agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of error, omission, or negligent act of OWNER, its agents, servants or employees in the performance of services under this Agreement, for all costs, losses and expenses, including but not limited to, damages to persons or property, judgments and attorneys' fees arising out of or in connection with the services performed by the OWNER pursuant to this Agreement.
7. This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the OWNER is an independent contractor under this Agreement and not the TOWN's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. The OWNER shall retain sole and absolute discretion in the judgement of the manner and means of carrying out OWNER's activities and responsibilities hereunder. The OWNER agree that it is a separate and independent enterprise from the TOWN, that it has full opportunity to find other business, that it can make its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment

relationship between the OWNER and the TOWN and the TOWN will not be liable for any obligation incurred by OWNER, including but not limited to unpaid minimum wages and/or overtime premiums.

8. This Agreement shall take effect as of the date of execution as shown herein below and shall end upon completion of the OWNER's completion of the IMPROVEMENTS described herein, which completion shall not extend beyond one hundred eighty (180) days from the date of execution of this Agreement, and OWNER having received all Open Space credits described in paragraph 2. This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by OWNER without the prior written consent of TOWN, which consent shall not be unreasonably withheld. It is further agreed that no modification, amendment or alteration in terms or conditions contained here shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

9. Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, the CONTRACTOR and TOWN designated the following as the respective places for giving of notice:

TOWN: Tom Willi, Town Administrator  
Town of Davie  
6591 Orange Drive  
Davie, FL 33314

Copy To: Monroe Kiar, Town Attorney, for the Town of Davie  
6191 SW 45<sup>th</sup> Street, Ste. 6151A  
Davie, FL 33314

Owner: Pasadena at Imagination Farms, Inc.  
12555 Orange Drive, Ste. 100  
Davie, FL 33330

10. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

11. If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be

affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

12. This Agreement shall be governed by the laws of the State of Florida with venue lying in Broward County, Florida. Furthermore, this Agreement represents the entire and integrated agreement between the TOWN and the OWNER and supersedes all prior negotiations, representations or agreements, either written or oral.

IN WITNESS WHEREOF, the TOWN and OWNER have hereunto set their hands and seals on the the dates indicated under each signature.

ATTEST:

TOWN OF DAVIE

BY: \_\_\_\_\_  
Harry Venis, Mayor

\_\_\_\_\_  
Russell Muniz  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Monroe Kiar  
Town Attorney

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

PASADENA AT IMAGINATION FARMS INC., a  
Florida Corporation

By: \_\_\_\_\_

Its \_\_\_\_\_

Dated: As of \_\_\_\_ / \_\_\_\_ / \_\_\_\_

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2001 by  
Larry Cott as \_\_\_\_\_ of Pasadena at Imagination Farms, Inc., a Florida corporation, on  
behalf of the corporation. He/she is personally know to me or has produced \_\_\_\_\_  
as identification.

\_\_\_\_\_  
(Signature of Person Taking Acknowledgment)

\_\_\_\_\_  
(Name Typed, Printed or Stamped)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Serial Number, if any)